



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

February 12, 1960

Honorable M. H. Crabb, M.D.
Secretary, Texas State Board
of Medical Examiners
Medical Arts Building
Fort Worth, Texas

Opinion No. WW-797

Re: Whether the "Hotel
Occupancy Tax" levied by
House Bill 11, Acts of
the 56th Legislature,
Third Called Session,
1959, Chapter 1, consti-
tutes a reimbursable ex-
pense under the provisions
of Section 36 of Article
V of House Bill 4, Acts of
the 56th Legislature,
Third Called Session,
1959, Chapter 23, page
442 (General Appropria-
tion Act).

Dear Dr. Crabb:

You have requested an opinion on the following ques-
tion:

"Enclosed are expense accounts of
seven Board members, which were returned
to us due to hotel tax being paid. Please
advise whether the hotel tax paid by the
Board members is a reimbursable expense."

Members of the Texas State Board of Medical Examiners
are reimbursed for their "actual meals, lodging, and incidental
expenses when traveling on official business either in or out
of the State." House Bill 4, Acts of the 56th Legislature, Third
Called Session, 1959, Chapter 23, page 442, Article V, Section
36 (General Appropriation Act).

In discussing the "Hotel Occupancy Tax" levied by House
Bill 11, Acts of the 56th Legislature, Third Called Session,
1959, Chapter 1, it was held in Attorney General's Opinion
WW-721 (1959):

"Expense reimbursement is part of the
employment contract with the State. To

illustrate, an employee compensated on a per diem basis receives the same amount for each day's travel regardless of the price of any hotel room that might have been rented (and regardless of whether a hotel room was actually rented) in the course of such travel. Obviously in this situation there is no direct connection between the State and the hotel. Likewise, in cases where the employee is paid for actual expenses, reimbursement is made pursuant to the employment contract. The State merely contracts with the employee to reimburse him for actual expenses incurred. The price of occupancy of a hotel room is merely one of such expenses, as is the hotel occupancy tax. The State does not contract directly with the hotel, and does not act through the employee as agent when the employee rents a hotel room." (Emphasis added).

It is our opinion that the above holding, that the "Hotel Occupancy Tax" is one of actual expenses incurred by an employee of the State, is equally applicable to State officials.

Likewise, it was held in Attorney General's Opinion WW-738 (1959):

"The second method of compensating employees traveling at the expense of the Bank is by reimbursement of actual expenses. Here again the Bank does not contract directly with the hotel. The employee contracts with the hotel in his private capacity; the consideration for occupancy of the hotel space is paid to the hotel by the employee likewise in his private capacity. The Federal Reserve Bank, by virtue of its employment agreement, contracts with the employee to reimburse him for actual expenses incurred; the Hotel Occupancy Tax is one of such expenses. The tax is an individual liability of the employee. It is not imposed upon the Bank; the fact that it is passed to the Bank does not make it an invalid imposition on the Bank." (Emphasis added).

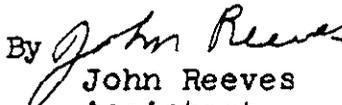
In view of the foregoing, it is our opinion that the "Hotel Occupancy Tax" paid by a State official or State employee traveling at State expense is a reimbursable expense within the meaning of the current General Appropriation Act. Therefore, those State officials and State employees who are entitled to reimbursement of actual expenses incurred are authorized to include in their traveling expense account the "Hotel Occupancy Tax" paid by them. Since members of the Texas State Board of Medical Examiners, while traveling on official business, are entitled to reimbursement for actual expenses incurred, you are advised that the expense accounts enclosed with your request correctly included the "Hotel Occupancy Tax" paid by the members of the Texas State Board of Medical Examiners.

SUMMARY

The "Hotel Occupancy Tax" levied by House Bill 11, Acts of the 56th Legislature, Third Called Session, 1959, Chapter 1, constitutes a reimbursable expense of State officials and State employees entitled to receive reimbursement of actual expenses when incurred while traveling on official business.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

JR:mfh:zt

APPROVED:
OPINION COMMITTEE
W.V. Geppert, Chairman
Robert T. Lewis
Virgil Pulliam
Jerry H. Roberts

REVIEWED FOR THE ATTORNEY GENERAL
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